

Search Warrants & Rule 40

Combining Technology, Law, & Investigative Tools

Introduction



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Senate Majority Leader Sheldon Killpack is arrested in DUI case

By Chris Berger and Louisa Fiorini, Associated Press
Published Saturday, Jan. 19, 2013 1:00 p.m. MST



MILLCREEK — The political future of Senate Majority Leader Sheldon Killpack is unclear after he was arrested early Friday for investigation of DUI.

"I am deeply sorry for the impact this incident will have on those who support and trust me — my colleagues in the Senate, my constituents and, most importantly, my family," the Republican from Syracuse said in a statement released by the Senate. "I am a firm believer in responsibility and personal accountability, and am prepared to



What You May Have Missed

Prison challenges: The ups and downs of returning to the incarcerated.

Drunk driving made: Growing from high strength in having the son and following city of negligence leader records for family's private battle.

Taking the heat: When services need to stop driving.



Overview

How e-warrants came to be in Utah:

State v. Rodriguez (Utah 2007)

-Learning from the process:

- Rule 40 Important Provisions
- Meeting legal standards
- Combining Technology and Law

Overview of E-warrant Practice:

- Where in the U.S. are e-search-warrants being used?
- How the system is working in Utah

Reviewing the e-affidavit

- Use of CI's v. Concerned Citizens
- Typographical errors

Using Other Investigative Tools:

- Administrative & Investigative Subpoenas
- U.S. v. Jones* (mobile tracking)
- Pen Register & Trap & Trace
- Title III wiretaps

Looking to the Future:

- Drones?
- Laser Microphones?

Supreme Court of Utah
STATE of Utah, Plaintiff and Petitioner,
v.
Heather Jo RODRIGUEZ, Defendant and Respondent.
No. 200601066
Jan. 30, 2007
Rehearing Denied March 28, 2007.

Background: Defendant pleaded guilty to the Third District Court, Salt Lake Department, (April 26, 2006), *U.S. v. Jones*, to automobile homicide. Defendant appealed. The Court of Appeals, 51 P.3d 854, reversed and remanded.

Holdings: On grant of state's petition for writ of certiorari, the Supreme Court, *holding*, 1, held that:
(1) per se or rigid circumstance rules does not apply to witnesses of blood for the purposes of gathering blood-alcohol evidence; and
(2) under totality of circumstances analysis, probable cause and exigent circumstances justified warrantless blood draw from defendant.



- Heather is driving on Main Street with a passenger – about 4:30 PM.
- Heather turns left into the path of a school bus.
- Her passenger is killed.
- Heather is taken to LDS hospital smelling of alcohol and acting belligerent. Her purse has a bottle of vodka.
- A blood draw is taken without Heather's permission.
- Her BAC is .39 – nearly five times the legal limit.
- Heather is charged with automobile homicide.

Rodriguez

¶ 37 We are wary of embracing holdings from other state courts that have applied the Fourth Amendment to warrantless blood-alcohol tests for a more fundamental reason. The premise that fuels the State's claim to per se exigency status for blood-alcohol tests is that owing to the evanescent quality of blood-alcohol evidence, the delays that accompany⁷⁷⁸ the acquisition of a warrant threaten to place useful evidence beyond the reach of law enforcement. The State assumes, without evidence or authority, that the attempt to obtain a warrant where blood-alcohol evidence is sought will always be accompanied by unacceptable delay. But what if a warrant can be obtained expeditiously? We believe that there is substantial reason to believe this is possible.

What 1966 United States Supreme Court Case Allowed for a Warrantless Blood Draw?

We are confident that, were law enforcement officials to take advantage of available technology to apply for warrants, the significance of delay in the exigency analysis would markedly diminish.

State. v. Rodriguez

“*Schmerber* does not stand for the proposition that the loss of evidence of a person's blood-alcohol through the dissipation of alcohol from the body was a sufficient exigency to justify a warrantless blood draw.”



757, 86 S.Ct. 1826. In 1966, the Justices of the Supreme Court could not reasonably have foreseen the ubiquity of the cell phone, and only those conversant with the futuristic imaginings of science fiction would have been capable of describing the gadgetry that equips the interior of the typical police cruiser today.



What T.V. Show First Aired in 1966?

The Utah Supreme Court Embraces the Future



FINALLY



We are confident ... that courts and law enforcement officials in Utah, particularly in our urban regions, would have the wherewithal to duplicate the warrant acquisition standards of Mesa, Arizona. (FAST). We agree with the sentiment of that case: "The mere possibility of delay does not give rise to an exigency."

"The rules for obtaining a warrant include a minimum of universally applicable standards ... The Fourth Amendment leaves to others the details of how to go about obtaining a warrant."

"The astonishing advances that have marked communications and information technology over recent decades have dramatically pared back the physical obstacles to warrant acquisition."

Prior to 1980, a peace officer or prosecuting attorney would be required to obtain the physical presence of a magistrate ... This would obviously take an unacceptable amount of time in many cases.



Meanwhile

- *Anderson v. Taylor, 149 P.3d 352 (Utah 2006)*



Challenge to 4th District Practice of Letting Officers Leave with Affidavit in Support of Search Warrant, & File it Later with the Return

Supreme Court of Utah
Brian R. ANDERSON, personally and on behalf of a class of persons similarly situated, Petitioner,
v.
The Honorable James R. TAYLOR, The Honorable John C. Backlund, The Honorable Lynn W. Davis, The Honorable Donald J. Eyre, Jr., The Honorable Steven L. Hansen, The Honorable Fred D. Howard, The Honorable Claudia Haycock, The Honorable Howard H. Maertani, The Honorable Samuel McVey, The Honorable Derek P. Pullen, The Honorable Gary D. Stout, and The Honorable Anthony Schofield, Judges, Fourth District Court in and for Utah County, State of Utah; Paul Vance; Lori Woffinden; and Eileen Jemison, Respondents.

No. 20050262,
Dec. 5, 2006.



¶ 22 We adopt a similar approach here. Giving law enforcement sole custody of all affidavits and warrants up through the point where the warrant has been executed and a return filed is inherently problematic for at least two reasons. First, it leaves the court without any record of the subpoena or the materials supporting its issuance until after the subpoena is executed and a return filed. Second, it allows for the possibility that affidavits and other court records may be mishandled or even altered without detection.

*The Affidavit & Warrant Must Remain on File with Court Upon Issuance.

Summary

Rodriguez & Anderson tell Utah's legal community:



No longer necessary . . .

- The Fourth Amendment has certain "universal" standards but it "leaves to others" the details of how to go about getting a warrant.
- Advances have "pared back" obstacles to warrant acquisition.
- Confident courts and law enforcement officials can duplicate AZ's fast warrant.
- There is "substantial reason" to believe a warrant can be obtained expeditiously.
- The significance of "delay" in the exigency analysis is now "markedly" diminished.
- The presence of a magistrate is no longer necessary.
- The affidavit & warrant must be filed and maintained by court upon issuance.

New Rule 40 Created Modern Rule of Procedure to Meet Modern Legal Requirements

- (a) *Means of communication.* ... "All communication between the magistrate and the peace officer or prosecuting attorney ... may be remotely transmitted by voice, image, text, or any combination of those, or by other means."
- (b) *Communication to be recorded.* ... "Recording shall be by writing or by mechanical, magnetic, electronic, photographic storage or by other means." ...
- (d) *Signing Warrant.* "Upon approval, the magistrate may direct the peace officer or the prosecuting attorney requesting the warrant from a remote location to sign the magistrate's name on the warrant."
- (e) *Filing of warrant and testimony.* ... "Filing may be by writing or by mechanical, magnetic, electronic, photographic storage or by other means."

Rule 40

Important Provisions

"Mam, I just got back this e-mail from the judge authorizing us to search ... it's here on my PDA device if you'd like to see ... " NO

"A copy of a search warrant shall be served in readable form upon the person or place to be searched."



The Future Has Arrived – Combining Rule 40 and Technology



Overview of E-warrants

First, Are E-warrants being used in other parts of the nation?
(Or, is Utah the envy of the nation?)

San Antonio Texas Experiment ...

Arizona ... ? (Rodriguez decision referred to Arizona as being fast).

No. Still use telephonic warrants, because their statute requires that a judge be allowed to question an officer about the affidavit – which is not compatible with e-warrants, or Utah law, which allows only a review of the “four corners” of the document.

Kentucky and Maine and other states will refer to “e-warrants” – These are electronic arrest warrants, which are entered into a system upon the filing of charges or a complaint. Neither state has developed a true “e-search-warrant”

One county in California – YES! Butte County... –
It just came online this year ...



Statistics

The First E-warrant filed in Utah was on February 10, 2008

| | | |
|------------------------------|-------|------------------|
| The total filings for 2008: | 135 | (11 per month) |
| The total filings for 2009: | 1,294 | (108 per month) |
| The total filings for 2010: | 2,703 | (225 per month) |
| The total filings for 2011: | 3,525 | (294 per month) |
| Filings for 2012 as of 5/1*: | 1,518 | (*379 per month) |

E-warrants are used Statewide now – paper warrants are becoming uncommon, referred to now by officers and judges as “The old fashioned way.”*

*In fact, most judges will want to know why an officer is bothering them in person.

Demonstration

(As Reviewing Prosecutors We Should Be familiar with what the officer & judge see on their end)

Log in to the UCJIS web page

ucjis.utah.gov

Wizard Navigation Controls

Utah Criminal Justice Information System - Windows Internet Explorer

https://net1.ucjis.utah.gov/webinfo/lookupPage.do

Utah Criminal Justice Information System

Home | Favorites | Results | Message Logs | Print

New Break-out Message

Transaction Code: 000

Answers for eWarrant # 039

Back (Save) (Cancel) (Next)

Department

Person

Property

Probable Cause

Conditions

Summary

* Officer Title:

* Officer Agency:

* County:

Prosecutor:

Prosecutor Office:

Back (Save) (Cancel) (Next)

Utah Department of Public Safety

Further distribution or disclosure of this information is controlled by state and federal law.

[illegible]

Utah Criminal Justice Information System - Windows Internet Explorer

https://test.ucjis.utah.gov/webfront/loadinfoPage.do

Utah Criminal Justice Information System

UCJIS
Utah Criminal Justice Information System

Transaction Code:

Home | Favorites | Results | M

[New Broadcast Message](#)

eWarrant Entry

*OR:

*eWarrant Type:

*Jurisdiction:

Case Number:

Utah Department of Public Safety
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Utah Criminal Justice Information System

| | |
|--|---|
| Home Favorites Results Message Log Broadcast Messages Help | |
| Action Code: <input type="text"/> 00 | New Search and Message |
| 09/09/2006 | |
| Answers for eWarrant # 639 | |
| [Back] [Save] [Cancel] [Next] | |
| Department Person Property Probable Cause Conditions Summary | <div> <p>On the premises known as (address):</p> <div></div> </div> <div> <p>Further described as (description):</p> <div></div> </div> <div> <p>On the person(s) known as:</p> <div></div> </div> <div> <p>On the vehicle(s) described as:</p> <div></div> </div> <div> <p>* City: <input type="text"/></p> </div> |
| [Back] [Save] [Cancel] [Next] | |
| Utah Department of Public Safety All rights reserved | |
| Further distribution or disclosure of this information is controlled by state and federal law. | |

Home | Favorites | Results | Message Log | Broadcast Messages | Help

Section Code: [New Broadcast Message](#) 58.75 used

Answers for eWarrant # 639

[Back] [Save] [Cancel] [Next]

Department
Person
Property
Probable Cause
Conditions
Summary

On the premises known as (address):

Further described as (description):

On the person(s) known as:

On the vehicle(s) described as:

* City:

[Back] [Save] [Cancel] [Next]

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Section Code: [New Broadcast Message](#) 53.58 used

Answers for eWarrant # 639

[Back] [Save] [Cancel] [Next]

Department
Person
Property
Probable Cause
Conditions
Summary

On the premises known as (address):

Further described as (description):

On the person(s) known as:

On the vehicle(s) described as:

* City:

[Back] [Save] [Cancel] [Next]

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Section Code: [New Broadcast Message](#) 53.58 used

Answers for eWarrant # 639

[Back] [Save] [Cancel] [Next]

Department
Probable Cause
Property
Conditions
Summary

* Description of items/property to be seized:

[Back] [Save] [Cancel] [Next]

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**Wizard Language Pops Up
When Mouse Hovers**

Answers for eWarrant # 639
[Back] [Save] [Cancel] [Next]

Department
Person
Property
Probable Cause
Conditions
Summary

* Description of items/property to be seized:
Provide a detailed list of the items you are searching for, starting each item on a new line. For each item, the total of your affidavit should contain sufficient facts to believe that the item could be connected to the crime being investigated.

1994 Ford Mustang
Money
Drugs
paraphernalia

[Back] [Save] [Cancel] [Next]

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Answers for eWarrant # 639
[Back] [Save] [Cancel] [Next]

Department
Person
Property
Probable Cause
Conditions
Summary

* And is evidence of the crime or crimes of:

* Training/Experience:

* Probable Cause:

[Back] [Save] [Cancel] [Next]

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Answers for eWarrant # 639
[Back] [Save] [Cancel] [Next]

Department
Person
Property
Probable Cause
Conditions
Summary

* And is evidence of the crime or crimes of:

* Training/Experience:

* Probable Cause:
(Enter or paste in from another document) a complete statement of facts that describe with particularity your investigation, and the basis for a magistrate to issue this search warrant.

[Back] [Save] [Cancel] [Next]

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Optional

Answers for eWarrant # 630
 [Back] [Save] [Cancel] [Next]

| | |
|---------------------------|--|
| Department | |
| Person | |
| Property | |
| Probable Cause | |
| Conditions | |
| Nighttime Warrant Reason: | |
| No Knock Warrant Reason: | |

[Back] [Save] [Cancel] [Next]

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IF NO TEXT IS ENTERED HERE – THE SYSTEM KNOWS IT SHOULD DEFAULT TO "DAYTIME" KNOCK AND ANNOUNCE AUTHORITY

IN THE 3RD DISTRICT COURT - SALT LAKE DEPARTMENT
 IN AND FOR GARFIELD COUNTY, STATE OF UTAH

AFFIDAVIT FOR SEARCH WARRANT

STATE OF UTAH)
) ss
 County of Garfield)

The undersigned affiant, **Officer JACOB DUNN** of **Garfield Co. SO**, upon a sworn oath, deposes and says:

That your affiant has reason to believe:

THAT

On the premises known as **123 Fake Street** in **Fictionville**, further described as **Red brick, 3-story house on south side of street**

On the person(s) of **Yogi Bear, white male, 35 years of age, 536 pounds, brown hair, brown eyes**

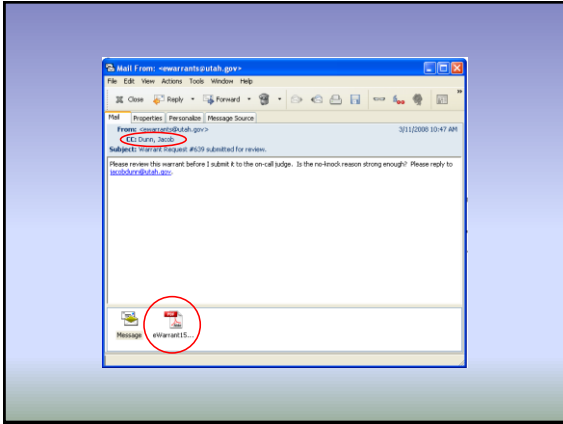
On the vehicle(s) described as **Red 1994 Ford Mustang**

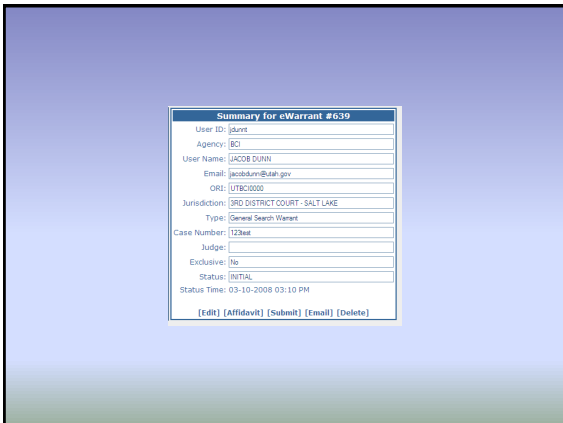
Prosecutor Email Setup

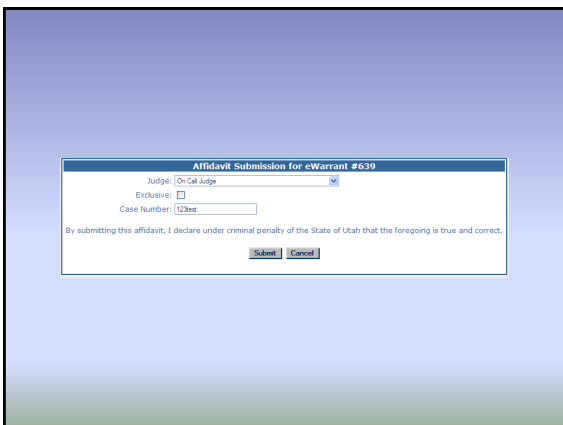
*Email Address:

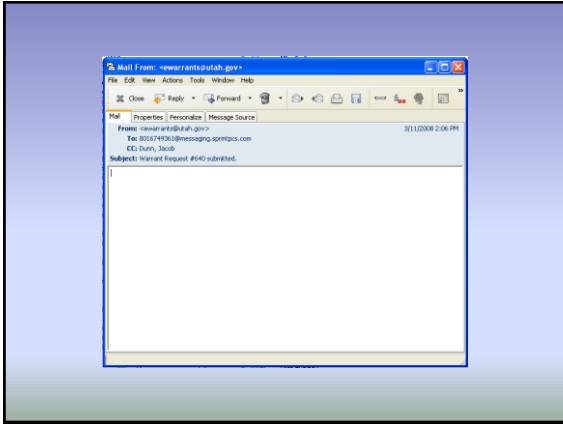
Email Message:

Text Message Email:









Transaction Code: 09 12 east (month)

| Actions | Number | Status | Status Time | User ID | Jurisdiction | Type |
|---|--------|---------------------|---------------------|---------|--------------------------------|------------------------|
| [GIR] [Affidavit] [Submit] [Email] [Delete] | 631 | INITIAL | 03-07-2008 09:18 AM | jdunvnt | 3RD DIST. COURT - WEST JORDAN | General Search Warrant |
| [Affidavit] | 633 | RETRACTED [History] | 03-07-2008 04:23 PM | jdunvnt | 3RD DIST. COURT - WEST JORDAN | General Search Warrant |
| [Affidavit] [Warrant] [Service] | 634 | APPROVED [History] | 03-10-2008 01:34 PM | jdunvnt | 3RD DISTRICT COURT - SALT LAKE | DUI Blood Draw Warrant |
| [Affidavit] [Retract] | 639 | SUBMITTED [History] | 03-11-2008 10:50 AM | jdunvnt | 3RD DISTRICT COURT - SALT LAKE | General Search Warrant |

Warrant is Reviewed by Judge

IN THE 3RD DISTRICT COURT - SALT LAKE DEPARTMENT
IN AND FOR GARFIELD COUNTY, STATE OF UTAH

SEARCH WARRANT

No. 641

COUNTY OF GARFIELD, STATE OF UTAH

To any peace officer in the State of Utah:

Proof by Affidavit under oath having been made this day before me by JACOB DUNN,
I am satisfied that there is probable cause to believe

THAT

On the premises known as 123 Fake Street in Fictionville, further described as
Red brick, 3-story house on south side of street;

On the person(s) of: Yogi Bear, white male, 35 years of age, 536 pounds, brown
hair, brown eyes;


On the vehicle(s) described as: Red 1994 Ford Mustang;

Consists of an item of, or constitutes evidence of, illegal conduct, possessed by
a party to the illegal conduct.

Affiant believes the property and evidence described above is evidence of the crime
or crimes of Drug use, manufacturing, and distribution..

YOU ARE THEREFORE COMMANDED:

to make a search of the above-named or described premises for the herein-above
described property or evidence and if you find the same or any part thereof, to bring
it forthwith before me at the 3RD DISTRICT COURT - SALT LAKE DEPARTMENT,
County of Garfield, State of Utah, or retain such property in your custody, subject to
the order of this court.

Dated: 11th day of March, 2008 /s/  Paul G. Maughan
District Court Judge

Return of Service

| Actions | Number | Status | Status Time | User ID | Jurisdiction | Type |
|--|--------|---------------------|---------------------|---------|--------------------------------|------------------------|
| [Edit] [Affidavit] [Submit] [Email] [Delete] | 631 | INITIAL | 03-07-2008 09:18 AM | jdunnt | 3RD DIST. COURT - WEST JORDAN | General Search Warrant |
| [Affidavit] | 633 | RETRACTED [History] | 03-07-2008 04:21 PM | jdunnt | 3RD DIST. COURT - WEST JORDAN | General Search Warrant |
| [Affidavit] [Warrant] [Service] | 634 | APPROVED [History] | 03-10-2008 01:34 PM | jdunnt | 3RD DISTRICT COURT - SALT LAKE | DUI Blood Draw Warrant |
| [Affidavit] [Retract] | 640 | SUBMITTED [History] | 03-11-2008 01:55 PM | jdunnt | 3RD DISTRICT COURT - SALT LAKE | DUI Blood Draw Warrant |
| [Affidavit] | 639 | RETRACTED [History] | 03-11-2008 01:58 PM | jdunnt | 3RD DISTRICT COURT - SALT LAKE | General Search Warrant |
| [Affidavit] [Warrant] [Service] | 641 | APPROVED [History] | 03-11-2008 03:22 PM | jdunnt | 3RD DISTRICT COURT - SALT LAKE | General Search Warrant |

Warrant Service Entry for eWarrant #641

*Service Date: 03/12/2008

*Served On: Yogi Bear, white male, 35 years of age, 536 pounds, brown hair, brown eyes, by virtue of a search warrant dated the 11th day of March, 2008, and issued by Magistrate TEST JUDGE of the 3RD DISTRICT COURT - SALT LAKE DEPARTMENT:

1994 Red Ford Mustang
20,000 cash
1 lb. marijuana
6 oz. methamphetamines

Property Taken:

Submit Cancel

RETURN TO SEARCH WARRANT

NO. 641

The personal property listed below or set out on the inventory attached hereto was taken from the person of Yogi Bear, white male, 35 years of age, 536 pounds, brown hair, brown eyes, by virtue of a search warrant dated the 11th day of March, 2008, and issued by Magistrate TEST JUDGE of the 3RD DISTRICT COURT - SALT LAKE DEPARTMENT:

1994 Red Ford Mustang
20,000 cash
1 lb. marijuana
6 oz. methamphetamines

I, Officer JACOB DUNN of Garfield Co. SO, by whom this warrant was executed, do swear that the above listed or below attached inventory contains a true and detailed account of all the property taken by me under the warrant, on the 12th day of February, 2008.

All of the property taken by virtue of said warrant will be retained in my custody subject to the order of this court or of any other court in which the offense in respect to which the property, or things taken, is triable.

I declare under criminal penalty of the State of Utah that the foregoing is true and correct.

Reviewing the E-Warrant Affidavit
READ EVERYTHING

Then & Now is the Same



Particularity Must Be Shown For:



- Probable Cause that a Crime Has Been Committed
- The Person / Place to Be Searched
- The Items to Be Seized, & How Connected to the Crime
- The Time to Conduct the Search "No knock?"

Illinois v. Gates, 462 U.S. 213 (1983); *Payton v. New York*, 445 U.S. 573 (1980); *G.M. Leasing Corp. v. United States*, 429 U.S. 338 (1977); *Allen v. Lindbeck*, 93 P.2d 920 (Utah 1939); 577-23-203(1) U.C.A. (CURRENTLY)

State v. Saddler, 104 P.3d 1265 (Utah 2004):

Utah Courts use a "totality of the circumstances" standard in determining probable cause.

State v. Purser, 828 P.2d 515 (Utah App. 1992):

"A citizen informant is generally presumed reliable by virtue of his/her willingness to come forward to police."

Kaysville v. Mulcahy, 943 P.2d 231 (Utah App. 1997):

Courts evaluate confidential informants using a three-prong test set, which examines the type of the tip or informant involved, the type of detail provided, and corroboration by the officer.

State v. Anderson, 701 P.2d 1099 (Utah 1985)

If the description is such that the officer with the search warrant can with reasonable effort ascertain and identify the place to be searched and items to be seized, it will meet the particularity requirement.

State v. Norris, 48 P.3d 872 (Utah 2001):

An "all records" search warrant is constitutional only if there is probable cause to believe that the business is permeated with fraud.

U.S. v. Lora-Solano, 330 F.3d 1228 (10th Cir. 2003):

Typographical errors which are not so material that they do not destroy the integrity of the warrant do not require suppression.

Any Judicial Challenges to Utah's E-Warrant?
(None in State Court) ...

One Recent Federal Case.

Relying on U.S. v. Bueno-Vargas, U.S. District Judge Clark Waddoups Recently Upheld a Utah e-Warrant (May 2012)

United States Court of Appeals,
Ninth Circuit,
UNITED STATES of America, Plaintiff-Appellee,
v.
Gerardo BUENO-VARGAS, Defendant-Appellant.

No. 05-50381
Argued and Submitted June 8, 2004.
Filed Sept. 21, 2004.

[6] We conclude that signing a statement under penalty of perjury satisfies the standard for an oath or affirmation, as it is a signal that the declarant understands the legal significance of the declarant's statements and the potential for punishment if the declarant lies. A leading treatise agrees and explains that the "true test" for whether a declaration is made under oath or affirmation "is whether the procedures followed were such that perjury could be charged therein if any material allegation contained therein is false." 2 Wayne R. LaFare, *Search and Seizure* § 4.3(c), at 474-75 (3d ed. 1996) (internal quotation marks omitted).

The Probable Cause Statement in this case satisfies the elements necessary for a valid affirmation. The Statement contained Agent Budrewicz's "declar[ation] under penalty of perjury" that the contents of the statement were "true and correct." Budrewicz's declaration that his statement was intended to be made under penalty of perjury ensured that he and the magistrate judge were reminded of the importance and solemnity of the process in which they were involved, and it created liability for Budrewicz if any of his statements turned out to be materially false.

[7] Defendant's assertion that an oath or affirmation must be administered in person is equally unavailing. It has long been held that the Fourth Amendment "does not require a face-to-face confrontation between the magistrate and the affiant."

Using Other Investigative Tools

- Administrative Subpoenas
- Investigative Subpoenas
- Birddog – Tracking Devices
- Pen Registers
- Title III Wiretaps

Administrative Subpoenas

U.C.A. 77-22a-1

1. Do Not Require Approval of the Court
2. Signed by the Prosecutor
3. Used ONLY in Controlled Substance Investigations
4. Use to obtain:
 1. Financial Documents
 2. Subscriber Information
 3. Phone Records
 4. Anything connected to drug activity

DAVID E. VOOGM
 District Attorney for Salt Lake County
 Chad L. Platt, #473
 Deputy District Attorney
 111 Tappin Broadway, 4th Floor
 Salt Lake City, Utah 84111
 Telephone: (801) 363-7900

DISTRICT ATTORNEY'S OFFICE FOR SALT LAKE COUNTY SPECIAL INVESTIGATIONS, NARCOTICS AND ASSET FORFEITURE UNIT

IN THE MATTER OF) ADMINISTRATIVE SUBPOENA
 A CONTROLLED SUBSTANCE) Mat. No. 05-003 CP
 INVESTIGATION)

THE STATE OF UTAH TO: **KEEPER OF THE RECORDS**
 Washington Mutual Bank
 401 West 2000 South
 West Valley City, Utah 84119

CAUTIONS:

BY THE SERVICE OF THIS SUBPOENA upon you, and pursuant to [77-22a-1, Utah Code Annotated 1953, as amended], you are notified that you are required to appear before the below-named Deputy District Attorney to give testimony and to bring with you and produce for examination the following books, records and papers at the time and place hereinafter set forth:

Documentation of any and all United States Currency, credits, effects, debts due or owing, transactions of deposit or of withdrawal, or share, or interest in stocks or shares or negotiable instruments, currently on deposit in the checking account subscribed to and in the name of SCOTT T. LESSER, at WASHINGTON MUTUAL BANK, bearing checking account number 498-322-291-X, and/or any other account belonging to Mr. Lesser, for the last sixty (60) days.

Scott T. Lesser
 872 West 1st South, Apt #12
 Salt Lake City, Utah

Investigative Subpoenas

- Use Only During Investigative Stage
- Require Application by Prosecutor
- Require Affidavit by Investigator
- A “criminal sealed” case number –
- And an Order signed by a Judge

Investigative Subpoenas

(Must be Used Pre-Charging)

U.C.A. 77-22-2

Good to Obtain Any Necessary Information, such as:

Medical Records (pre-filing, with HIPAA language)
Phone Records
Bank Records
Internet Subscriber Records
Business Records or Documents
Etc., Etc.

LOHRA L. MILLER
District Attorney for Salt Lake County
CHAD L. PLATT, 8475
Deputy District Attorney
111 East Broadway, 4th Floor
Salt Lake City, Utah 84111
Telephone: (801) 363-7900

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR THE COUNTY OF SALT LAKE, STATE OF UTAH

IN THE MATTER OF A) AFFIDAVIT OF
CRIMINAL INVESTIGATION) SGT. JESS ANDERSON
) CS NO. _____

STATE OF UTAH) ss.
County of Salt Lake)

I, Sgt. Jess Anderson, being first duly sworn upon oath, depose and state as follows:
1. I am currently a Sergeant with the Utah Highway Patrol, and have responsibility to serve and protect dignitaries, including State Representatives and Senators, at the Utah State Capitol Building.

2. On ____ (received e-mail, etc. – pc statement, why needed)
DATED this ____ day of February, 2008.

SGT. JESS ANDERSON,
Affiant

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR THE COUNTY OF SALT LAKE, STATE OF UTAH

IN THE MATTER OF A) SUBPOENA DUCES TECUM
) SEALED
CRIMINAL INVESTIGATION) CS NO. _____

THE STATE OF UTAH TO: YAHOO LEGAL DEPARTMENT
Attn: John P. Hernandez
(Fax) (408) 349-5013
(Pin) (408) 349-7279

You are hereby commanded to set aside all business and excuses to appear at the Office of the District Attorney for Salt Lake County, 111 East Broadway, 4th Floor, Salt Lake City, Utah, to give testimony in aid of a criminal investigation. You are entitled to be represented by legal counsel at the time of this examination.

You are also commanded to bring with you, or provide:

Information for Yahoo subscriber: georgeschildt2000@yahoo.com, to include full name, address, and telephone number, or other identifying information on record for said electronic e-mail address.

Mobile Tracking Devices & U.S. v. Jones



Does Utah Have a Mobile Tracking Device Statute?

~~U.C.A. § 77-23a-15.5~~

NO. It was Repealed in 2012.

Why?

How Does an Officer Get A GPS Tracker Now?

"Birddogs"



Mobile Tracking Devices

U.S. v. Jones (2012 U.S. Supreme Court)

~~U.C.A. § 77-23a-15.5~~

•Statute Required ONLY a "certification by the applicant that the information likely to be obtained is *relevant* to an ongoing criminal investigation."

•This is now an unconstitutional standard – you must have probable cause.

•So, you must obtain an actual search warrant for the tracking device if placing it on property belonging to another – OR – I would suggest – if it means you might be able to track a specific person for a long period of time, even if there is no "trespass" in placing the device. ****

•For example, we only use search warrants to do "pinging" of a cell phone. Some agencies try and use Pen Registers – but in reality, Utah's Wire Statute does not cover "Pinging" a phone.

[illegible]

Pen Register & Trap and Trace

| Observer | | Date | Time | Lat | Long | Species | Sex | Age | Weight | Wing | Tail | Length | Comments |
|----------|------|-----------|-------|-----------|-----------|---------|------|------|--------|-------|-------|--------|----------|
| Site | Time | Lat | Long | City | Time | City | Time | City | City | City | City | City | City |
| 189 | V | 8/24/2007 | 15:12 | 28° 45' N | 84° 45' W | FRIG | ♀ | AD | 100.0 | 180.0 | 110.0 | 190.0 | FRIG |
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Title III Wiretaps

U.C.A. § 77-23a-10

- Expensive and Time Consuming
- Require Ongoing Court Oversight
- Must Establish Probable Cause:
 - That Target Will be Heard on the Subject Phone
 - That the Things Said Will Provide Evidence of Crime(s) Being Investigated
- Exhaustion
- Proper Minimization Capabilities

EXHAUSTION

77-23a-8(1)(c):

“A full and complete statement as to whether other investigative procedures have been tried and failed or why they reasonably appear to be either unlikely to succeed if tried or too dangerous.”

Judge Reviews Affidavit and Confers with Counsel and the Lead Officer



Judge Makes Finding That the Wiretap Is Necessary

DAVID E. YOCUM
District Attorney for Salt Lake County
CLARK A. HARRIS, Bar No. 5713
CHAD L. PLATT, Bar No. 8475
Deputy District Attorney
211 East 400 South, Suite 300
Salt Lake City, Utah 84111
Telephone (801) 363-7900

IN THE THIRD DISTRICT COURT, SALT LAKE DEPARTMENT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

| | |
|---|---|
| THE STATE OF UTAH, IN THE MATTER OF WIRELESS TELEPHONE NUMBER: (801) 541-3266, KSN #6416E48A LISTED TO: MIKE J. NIKOLS AT THE ADDRESS OF: 1301 South State Street Salt Lake City, Utah | SEALED EX-PARTE AFFIDAVIT IN SUPPORT OF AN APPLICATION FOR AN ORDER AUTHORIZING THE INTERCEPTION OF WIRE COMMUNICATIONS. Case No. CS 01-35 |
|---|---|

Affiant, Investigator Dirk Watrous, being first duly sworn, testifies and states as follows in support of an application for an Order of this Court authorizing the interception of wire communications over the wireless telephone number (801) 541-3266 with an KSN #6416E48A, assigned and subscribed to MIKE J. NIKOLS, at the address of 1301 South State Street, Salt Lake City, Utah:

1. I am presently an Investigator for the Salt Lake County District Attorney's Office,

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Document

Minimization & the "War Room"

- (c) Every order and extension shall contain a provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted so as to minimize the interception of communications not otherwise subject to interception under this chapter, and must terminate upon attainment of the authorized objective, or in any event within 30 days.
- (d) If the intercepted communication is in a code or foreign language, and an expert in that foreign language or code is not reasonably available during the interception period, the minimizing of the interception may be accomplished as soon as practicable after the interception.
- (e) An interception under this chapter may be conducted in whole or in part by government personnel or by an individual under contract with the government and acting under supervision of an investigative or law enforcement officer authorized to conduct the interception.

The Supervising Attorney Should Prepare the Minimization Instructions and Meet with All Investigators In Person Before the Wiretap Begins, Where the Attorney Will Read the Affidavit & Instructions OUT LOUD and Will Have a Signing Sheet for All Members of the Team to Sign Documenting that They Have Been "Minimized" Before any Person Enters the "War Room"

SUPREME COURT OF THE UNITED STATES

Syllabus

UNITED STATES *v.* JONESCERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE DISTRICT OF COLUMBIA CIRCUIT

No. 10–1250. Argued November 8, 2011—Decided January 23, 2012

The Government obtained a search warrant permitting it to install a Global-Positioning-System (GPS) tracking device on a vehicle registered to respondent Jones's wife. The warrant authorized installation in the District of Columbia and within 10 days, but agents installed the device on the 11th day and in Maryland. The Government then tracked the vehicle's movements for 28 days. It subsequently secured an indictment of Jones and others on drug trafficking conspiracy charges. The District Court suppressed the GPS data obtained while the vehicle was parked at Jones's residence, but held the remaining data admissible because Jones had no reasonable expectation of privacy when the vehicle was on public streets. Jones was convicted. The D. C. Circuit reversed, concluding that admission of the evidence obtained by warrantless use of the GPS device violated the Fourth Amendment.

Held: The Government's attachment of the GPS device to the vehicle, and its use of that device to monitor the vehicle's movements, constitutes a search under the Fourth Amendment. Pp. 3–12.

In cases involving even short-term monitoring, some unique attributes of GPS surveillance relevant to the Katz analysis will require particular attention. GPS monitoring generates a precise, comprehensive record of a person's public movements that reflects a wealth of detail about her familial, political, professional, religious, and sexual associations. See, e.g., *People v. Harris*, 12 N.Y.3d 632, 441–442, 909 N.E.2d 1195, 1199 (2009) ("Disclosed in GPS data . . . will be trips the inadequately private nature of which takes little imagination to envision: trips to the psychiatrist, the plastic surgeon, the abortion clinic, the AIDS treatment center, the strip club, the criminal defense attorney, the by-the-hour motel, the union meeting, the mosque, synagogue or church, the gay bar and on and on"). The Government can store such records and efficiently mine them for information years into the future. *Florida-Morono*, 617 F.3d, at 1124 (quoting *Rosinski*, C.J.). And because GPS monitoring is cheap in comparison to conventional surveillance techniques and, by design, proceeds surreptitiously, it evades the ordinary checks that constrain abusive law enforcement practices: "limited police resources and community hostility."

Justice Kagan

For these reasons, I conclude that the lengthy monitoring that occurred in this case constituted a search under the Fourth Amendment. I therefore agree with the majority that the decision of the Court of Appeals must be affirmed.



Justice Alito

as reasonable. See *Knotts*, 460 U.S., at 281–282. But the use of longer term GPS monitoring in investigations of most offenses impinges on expectations of privacy. For such offenses, society's expectation has been that law enforcement agents and others would not—and indeed, in the main, simply could not—secretly monitor and catalogue every single movement of an individual's car for a very long period. In this case, for four weeks, law enforcement agents tracked every movement that respondent made in the vehicle he was driving. We need not identify with precision the point at which the tracking of this vehicle became a search, for the line was surely crossed before the 4-week mark. Other cases may present more difficult questions. But where uncertainty exists



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